

§ 417.540

(c) *Application.* Enrollment and marketing costs are allowable, whether incurred directly by HMO or CMP staff or under contract with marketing specialists or other outside consultants.

(d) *Limitation on payment.* The relatively higher costs that an HMO or CMP is likely to incur in initially offering its plan to Medicare beneficiaries are taken into account in determining whether enrollment and marketing costs are reasonable in amount. However, if those costs exceed amounts that would be paid by prudent management, the excess is not allowable.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 46230, Sept. 6, 1995]

§ 417.540 Enrollment costs.

(a) *Principle.* Enrollment costs are allowable if incurred in maintaining and servicing subscriber contracts for prepayment enrollees.

(b) *Kind of costs included.* Enrollment costs include, but are not limited to, reasonable costs incurred in connection with maintaining statistical, financial, and other data on enrollees.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993]

§ 417.542 Reinsurance costs.

Reinsurance costs are not allowable.

§ 417.544 Physicians' services furnished directly by the HMO or CMP.

(a) *Principles.* (1) Compensation paid by an HMO or CMP to physicians is an allowable cost to the extent that it is commensurate with the compensation paid for similar services performed by similar physicians practicing in the same or a similar locality.

(2) Physician compensation may take various forms, but the aggregate compensation allowable must be reasonable in relation to the services personally furnished.

(3) If aggregate physician compensation costs exceed what is normally incurred, the excess is not a reasonable cost.

(b) *Application.* (1) In determining the allowability of the costs of physicians' services, the cost of personal services (for example, expenses attributable to

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salaries, wages, incentive payments, fringe benefits) must be distinguished from the cost of nonpersonal services (for example, expenses attributable to facilities, equipment, support personnel, supplies).

(2) To be allowable, compensation must be reasonable in relation to the personal services furnished.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 46230, Sept. 6, 1995]

§ 417.546 Physicians' services and other Part B supplier services furnished under arrangements.

General principle. The amount paid by an HMO or CMP for physicians' services and other Part B supplier services furnished under arrangements is an allowable cost to the extent it is reasonable. Costs are considered reasonable if they—

(a) Do not exceed those that a prudent and cost-conscious buyer would incur to purchase those services; and

(b) Are comparable to costs incurred for similar services furnished by similar physicians or other suppliers in the same or a similar geographic area.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 34887, July 5, 1995; 60 FR 45372, Aug. 31, 1995]

§ 417.548 Provider services through arrangements.

(a) *Principle.* The cost incurred by an HMO or CMP for covered services furnished under arrangement with a provider is allowable to the extent that it would be allowable and payable under parts 412 and 413 of this chapter, unless the HMO or CMP petitions CMS and demonstrates to HFCA's satisfaction that payment in excess of the amount authorized under parts 412 and 413 of this chapter is justified on the basis of advantages gained by the HMO or CMP.

(b) *Application.* An advantage gained must represent a real and tangible benefit received by the HMO or CMP for the excess cost incurred, and any excess payment is subject to other applicable requirements of parts 405, 412 and 413 of this chapter, including tests of reasonableness.

(c) *Example.* In the case of an arrangement an HMO or CMP has with a provider that is located outside the

HMO's or CMP's geographic area and that is not related to the HMO or CMP by common ownership or control, payment of the provider's charges to the HMO or CMP (rather than the payment amounts determined under part 412 or part 413 of this chapter) may be justified in exchange for the advantages of not having to incur the administrative costs of determining the provider's reasonable cost and of making a more timely final settlement with the HMO or CMP. However, repayment of the provider's charges would be acceptable only if—

(1) The provider furnishes services to the HMO's or CMP's enrollees infrequently;

(2) The charges represent an insignificant portion of total Medicare reimbursement to the HMO or CMP; and

(3) The charges do not exceed the customary charges by the provider to its other patients for similar services.

[50 FR 1346, Jan. 10, 1985, as amended at 51 FR 34832, Sept. 30, 1986; 58 FR 38080, July 15, 1993; 60 FR 46230, Sept. 6, 1995]

§ 417.550 Special Medicare program requirements.

(a) *Principle.* CMS pays the full reasonable cost incurred by an HMO or CMP for activities that are solely for Medicare purposes and unique to Medicare contracts under section 1876 of the Act.

(b) *Application.* CMS pays the full reasonable cost of the following activities:

(1) Reporting increases and decreases in the number of Medicare enrollees.

(2) Obtaining independent certification of the HMO's or CMP's cost report to the extent that it is for Medicare purposes.

(3) Reporting special data that CMS requires solely for program planning and evaluation.

(c) *Prior approval requirement.* The costs specified in paragraph (b) of this section must be separately budgeted and approved by CMS before the contract period begins.

(d) *Limit on full payment.* Full payment is limited to the costs specified in paragraph (b) of this section. All other administrative costs must be apportioned in accordance with § 417.552.

[60 FR 46230, Sept. 6, 1995]

§ 417.552 Cost apportionment: General provisions.

(a) *Basic rule.* The HMO or CMP must apportion its total allowable direct and indirect costs among its Medicare enrollees, its other enrollees, and its non-enrolled patients—

(1) In accordance with this subpart; and

(2) Using methods approved by CMS.

(b) *Purpose of apportionment.* The purpose of apportionment is to ensure that—

(1) The cost of services furnished to Medicare enrollees is not borne by other enrollees and nonenrolled patients; and

(2) The cost of the services furnished to other enrollees and nonenrolled patients is not borne by Medicare.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 46230, Sept. 6, 1995]

§ 417.554 Apportionment: Provider services furnished directly by the HMO or CMP.

The Medicare share of the cost of covered services furnished to Medicare enrollees by providers that are owned or operated by the HMO or CMP or are related to the HMO or CMP by common ownership or control must be determined in accordance with the apportionment methods set forth in part 412, §§ 413.24, 413.55, and 415.55 of this chapter.

[51 FR 28574, Aug. 8, 1986, as amended at 51 FR 34832, Sept. 30, 1986; 58 FR 38082, July 15, 1993; 60 FR 46231, Sept. 6, 1995; 60 FR 63189, Dec. 8, 1995]

§ 417.556 Apportionment: Provider services furnished by the HMO or CMP through arrangements with others.

The Medicare share of the cost of covered services furnished to Medicare enrollees through arrangements with providers other than those specified in § 417.554 must be determined as follows:

(a) The Medicare share must be based on the cost the HMO or CMP pays the provider under their arrangement, to the extent that cost is reasonable and within the limits established by §§ 417.534 through 417.548.

(b) Except as specified in paragraph (c) of this section, apportionment must